

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:11 cv 52**

SHEILA D. BURNETTE,

Plaintiff

v

**AUSTIN MEDICAL, INC., and THOMAS
M. HUTTO, JR.,**

Defendants.

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ORDER

THIS MATTER has come before the court pursuant to a “Certification and Report of Rule 26(f) Conference and Discovery Plan” (#10) filed by the parties herein. An examination of the file in this matter has revealed that on March 15, 2011 defendants filed a motion to dismiss the complaint (#3) and a memorandum in support thereof (#4). Also on that same date, defendants filed a Motion to Strike (#5) and a memorandum in support of the motion to strike (#6). Those motions are now being considered by the undersigned and a Memorandum and Recommendation will be issued forthwith.

LCvR 16.1(A) provides as follows:

(A) Initial Attorney’s Conference. As soon as is practicable, and in any event not later than fourteen (14) days from joinder of the issues (as defined in Section (D) below), the parties or their counsel shall confer as provided by Fed. R. Civ. P. 26(f), and conduct an “Initial Attorney’s Conference” (“IAC”).

LCvR 16.1(D) provides:

(D) Joinder of the Issues. For the limited purpose of these Local Civil Rules, “joinder of the issues” occurs when the final answer to the complaint, third-party complaint, or crossclaim or the final reply to

counterclaim has been filed, or the time for doing so has expired. Rule 12 motions contained in an Answer, but not supported by a brief, act as placeholders and do not prevent joinder of the issues. When Rule 12 motions are filed and briefed, issues will not join until such motions are resolved by the court, unless otherwise ordered by the Court.

Although an Answer (#) was filed by defendants on March 15, 2011, there has not been a joinder of issues. The defendants' Rule 12 motion has been filed and briefed and thus issues have not joined until those motions are resolved by the court, as provided by LCvR 16.1(A). Due to the fact that issues have not joined, the filing of the Certification of Initial Attorney's Conference ("CIAC") was premature. It would be inappropriate for the undersigned to enter a Pretrial Order and Case Management Plan until the motions of defendants have been resolved. As a result, the undersigned will strike the Certification and Report of Rule 26(f) Conference and Discovery Plan (#10) without prejudice pending the rulings of the court on the Motion to Dismiss and Motion to Strike.

ORDER

IT IS, THEREFORE, ORDERED that the Certification and Report of Rule 26(f) Conference and Discovery Plan (#10) is hereby **STRICKEN** without prejudice.

Signed: April 7, 2011

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Dennis L. Howell
United States Magistrate Judge

